

Objection to the Issuance of Permit Approval No. 473-05
Mr. Perry Godlove, Godlove Enterprises, Inc., White County
2002 OEA 18 (02-S-J-2863)

TOPICS:

land permit
Dismiss for Lack of Jurisdiction over the Subject Matter
nuisance
Trial Rule 12 (B) (1)
stay of permit
endanger public health or the environment
Subject Matter Jurisdiction

PRESIDING JUDGE:

Vogel

PARTY REPRESENTATIVES:

Petitioner: Alan D. Wilson
IDEM: Cindy Shively Klem

ORDER ISSUED:

September 22, 2002

INDEX CATEGORY:

Land

FURTHER CASE ACTIVITY:

[none]

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STATE OF INDIANA)	BEFORE THE INDIANA OFFICE OF
)	ENVIRONMENTAL ADJUDICATION
COUNTY OF MARION)	

IN THE MATTER OF:)	
)	
OBJECTION TO THE ISSUANCE OF)	
PERMIT APPROVAL NO. 473-05)	
MR. PERRY GODLOVE)	CAUSE NO. 02-S-J-2863
GODLOVE ENTERPRISES, INC.)	
WHITE COUNTY)	

ORDER UPHOLDING PERMIT APPROVAL NO. 473-05

This matter comes before the Office of Environmental Adjudication pursuant to a hearing on a Motion for a Stay the Permit Approval No. 473-05 (“permit”) and Petitioners, by counsel, moved in open court to withdraw their request for a stay of the permit; **AND THE COURT**, having been duly advised, **GRANTED THE MOTION**.

FURTHER, the parties, by agreement, moved the Court to render a Judgment on the Pleadings for the purpose of disposing of this proceeding; **AND THE COURT**, having been duly advised and having considered the pleadings finds the following:

Findings of Facts and Conclusions of Law:

1. A review of the pleadings supports the Motions of the Petitioner’s and Respondents’ to Dismiss for Lack of Jurisdiction over the subject matter;
2. The Petition and Amended Petition claim that the permit violates 327 IAC 7-6-3 in that the permittee’s use of the land would create a nuisance per se as defined by 327 IAC 7-1-2.
3. That 327 IAC 7-6-3 permits IDEM to deny a permit approval under this rule only “if it is determined that particular characteristics or limitations exist in or near the proposed wastewater land application site which would endanger public health or the environment or which would create nuisance conditions.”
4. That Petitioners have not alleged in their Petition or Amended Petition that the “nuisance” that would be created by the use of land is related to the particular characteristics or limitations of the site;
5. That the Petitioners are alleging “general nuisance”, for which subject-matter jurisdiction is found in a State Court of general jurisdiction.

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6. The Office of Environmental Adjudication is an administrative court of limited, statutory jurisdiction and is not endowed with equity jurisdiction.
7. The failure of the Petitioners to allege limitations of the site in question deprives this court of specific subject-matter jurisdiction pursuant to Indiana Rules of Court, Trial Rule 12 (B) (1), lack of subject-matter jurisdiction.
8. That IDEM did not abuse its discretion in the issuance of permit approval no. 473-05.
9. That even assuming *arguendo* that the OEA has jurisdiction of a general claim for nuisance under 327 IAC 7-6-3, on August 8, 2002, 327 IAC 7-6 was repealed and a new rule, 327 IAC 7.1 became effective. The current rule does not all allow IDEM to consider nuisance at all when issuing a permit approval.
10. The objection to the issuance of permit approval no. 473-05 is denied and the permit approval no. 073-05 is hereby upheld.

You are further notified that, pursuant to Indiana Code § 4-21.5-5, this Final Order is subject to judicial review. Pursuant to Indiana Code § 4-21.5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 22nd day of September, 2002 in Indianapolis, Indiana.

Candace T. Vogle
Administrative Law Judge